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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/965,697	09/27/2001	Tarlochan Singh Dhadialla	A01115A (RH-0036)	4412
7590	10/03/2003		EXAMINER	
RheoGene Inc 2650 Eisenhower Avenue Norristown, PA 19403				BRANNOCK, MICHAEL T
			ART UNIT	PAPER NUMBER
			1646	

DATE MAILED: 10/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/965,697	DHADIALLA ET AL.	
	Examiner	Art Unit	
	Eileen O'Hara	1646	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) _____ is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) 1-20 are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) Interview Summary (PTO-413) Paper No(s) _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-4, 9-12 and 16-20, drawn to multiple inducible gene modulation systems, classified in class 536, subclass 23.5, class 435, subclasses 320.1 and 325, for example.
- II. Claims 5 and 13, drawn to a transgenic organism, classified in class 800, subclass 3, for example.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related in that the multiple inducible gene modulation systems can be produced in a cell, as in Invention I, or in a transgenic organism, as in Invention II. However, the transgenic organism is a much more complicated system from that of a cell, and would have different uses from that of the cell.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their different classification and recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Claims 1-20 are generic to a plurality of disclosed patentably distinct species of multiple inducible gene modulation systems, comprising ligand binding domain, DNA binding domain, and transactivation domain.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed multiple inducible gene modulation system for examination purposes, even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eileen O'Hara whose telephone number is (703) 308-3312. The examiner can normally be reached on m-f.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne Eyler can be reached on (703) 308-6564. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Eileen B. O'Hara

A handwritten signature in black ink that reads "Eileen B. O'Hara". The signature is written in a cursive style with "Eileen" on the top line and "B. O'Hara" on the bottom line.